

IN SENATE,

February 21, 1845.

REPORT

Of the committee on the militia and public defence,
on the bill entitled "An act to pay the guard of
one hundred enlisted men, for the protection of
the jail in the city of Hudson."

Mr. Clark, from the committee on the militia and public defence,
to whom was referred the bill entitled "An act to pay the guard of
one hundred enlisted men, for the protection of the jail in the city of
Hudson," most respectfully

REPORTS:

That for a number of years past, disaffection toward the laws, and
a disposition to withstand their execution and the judgments and de-
crees of your courts, has been manifested by a portion of the citi-
zens of a number of the counties of this State. This feeling has
been increasing and extending until it has manifested itself in overt
acts, destructive of all law and order, rendering the civil arm pow-
erless, sacrificing the lives of peaceable citizens, defying your public
officers when in the proper discharge of their legal duties, compell-
ing the timid, against their will, to join in opposition; and finally,
with the evidence of conscious guilt, has assumed savage and hide-
ous disguises, under which, with greater impunity, to raise the arm
of forcible rebellion against the laws of your State.

This condition of affairs has grown out of the existence of large landed estates located in different parts of this State, belonging to individual families, and occupied by the disaffected and others, as tenants, who are feeling the inconvenience and evils which ever have and ever will attend the condition of landlord and tenant, when it is extended over any very considerable portion of a country. But it should be remembered by these men that they have voluntarily assumed the condition of tenants with its legal consequences ; and that while we live in a country governed by laws, where every citizen is directly or indirectly a part of the law making power, the remedy for evils should be found in the statute book, and not in the strong arm of force.

They should also consider that by the existing laws, these estates are wasting away like the snow before an April sun. Our laws prohibiting entails in conveyances and devises, and providing for distribution and descents, are rapidly diffusing these estates through a great variety of holders ; while the laws of the Creator, which punish the idle, the extravagant and the prodigal, in connection with the laws to promote commerce, which subject their estates to execution and sale, are sure and certain, in a short period of time, to change the fee of these estates into the hands of the hardy tillers of the soil.

But, in returning to the particular facts which should determine whether the expenses which this bill provides for, should be chargeable to the county of Columbia, or to the State treasury, it becomes proper and necessary to examine to some extent, the peculiar condition of affairs which, in the opinion of your State officers and of other prudent citizens, rendered the raising of this corps of one hundred men and the ordering out of other military forces, necessary.

In 1839, the resistance to the execution of the laws had become so strong in some parts of the county of Albany, and the organization of disaffected persons so perfect and general, as to assume rather the character of insurrection and rebellion, than of mere resistance to the service of process. This became so formidable, that the Executive of the State deemed it his duty to call to the aid of the civil officers, the military force of other portions of the State. This was done by ordering out brigades and regiments of the ordinary militia, who, although they obeyed the summons with promptness and per-

formed the duty required of them as citizens, yet from their organization and want of discipline, were not as well calculated to effect the object with despatch and economy, as your independent companies of selected and well drilled citizen soldiers, or as the corps in this case formed at Hudson.

The feeling thus manifested in Albany county, in 1839, has been extending and gaining strength until it includes, in a greater or less degree, some fifteen or twenty counties of the State. And if we take the assertions of the malcontents, it has a still wider extent.

We have witnessed these men forming county and district organizations, holding public and private meetings, attended by large numbers of men, exciting the people to disorder and resistance of the laws. And finally we have seen large numbers of men in different counties assuming savage disguises, such as to prevent all personal identity, with Indian names, acting in concert and by secret communication; with arms in their hands, resisting and maltreating your public officers, setting all law and order at defiance; committing crimes of every grade, from simple assaults and batteries up to manslaughter and murder, until peaceable citizens could not safely travel your highways and public thoroughfares, without danger of insult and personal violence. We find some of these men recognized as leaders, thus disguised and armed, travelling from county to county, exciting insurrection and rebellion against your laws, committing overt acts of resistance and insurrection in different counties of your State, with alleged and undoubted concert and co-operation.

While this state of affairs was existing, and its evils increasing and becoming more alarming from day to day, on or about the 11th day of December last, about three hundred men from different counties, completely disguised and armed, at Copake in the county of Columbia, assaulted the sheriff of that county while in the discharge of the duties of his office, forcibly deprived him of his official papers, threatened him with serious personal injury, and committed his papers to the flames.

And on the 18th of the same month, at Smoky Hollow, in the same county, from one hundred and fifty to two hundred men again assembled, similarly disguised and armed, attended by a large number

of persons not in disguise, but who gave direct and open countenance to these illegal proceedings, committing riotous acts, and exhibiting a spirit of rebellion against the laws ; and finally bringing their meeting to that point which all sensible men must have foreseen it would sooner or later reach, by causing the death of an unoffending and peaceable citizen by shooting him in the public streets.

Your committee do not propose to stop to enquire whether this was a cold and premeditated murder, or whether it was the careless result of an illegal and criminal assemblage of a disguised and armed mob. Whenever these men can give a sufficient reason for a disguised and armed assemblage, for setting the laws at defiance, for carrying terror and alarm into a before quiet and peaceable neighborhood, it will be time enough to enquire into the guilt or innocence of this individual act. But it should be borne in mind that another assemblage of men, shortly after, similarly disguised and armed, in a neighboring county, in open day, committed a cold blooded and deliberate murder by shooting down another peaceable citizen, while engaged in his lawful pursuits, because he would not consent to their criminal conduct and join in carrying out their wicked designs.

When the intelligence of this outrage at Smoky Hollow reached the citizens of Hudson, they, with that promptness and energy which characterize the independent citizens of our commonwealth, at once in aid of the faithful sheriff of that county, started in pursuit of the perpetrators of these crimes, and after much resistance, and with great effort, they fortunately succeeded in arresting Smith A. Boughton and Mortimer C. Belden, two of the most active leaders in these disguised and riotous assemblages, and in committing them to the jail of Columbia county, in the city of Hudson.

The capture of these notorious Indian leaders was attended by great excitement among their followers, and they were no sooner committed to the county prison than loud and alarming threats of an attack upon the city of Hudson, and upon the court-house and jail of the county, and of a rescue of the prisoners therein confined, were in no unmeaning manner uttered ; and large numbers of persons (many of whom were from Rensselaer and other counties) supposed to be among the disaffected, to the number of from one to two thousand, came to the city of Hudson, having in many instances their disguises

and arms with them, for the purpose, as it was at the time apprehended, and afterwards with reasonable certainty ascertained, of effecting the rescue of the prisoners held in custody, and were only deterred from the attempt by the preparations made for their reception by the citizens of Hudson, who, with commendable promptness, rallied to the defence of the court-house and jail, and for two or three days and nights, as a band of volunteers, protected the county buildings from the meditated attack.

Meanwhile the examination of the prisoners was progressing, and the Attorney-General of the State arrived at Hudson to participate in the legal proceedings and to advise as to the most effective course to be pursued to bring the offenders to justice ; to quell the riots and to secure the safety of the prison and the supremacy of the law. At his suggestion a corps of one hundred men was enlisted, mainly to guard the court-house and jail from attack, and every assurance was given by him, which was in the power of a faithful and public spirited officer to make, without any direct or binding authority, that in his opinion the State would cheerfully sustain the expense. Acting upon this suggestion, and upon the concurrent advice of several prominent gentlemen of the city of Hudson, and having received from a number of the citizens a bond of indemnity in the penalty of \$3,000, the sheriff of the county proceeded immediately to enrol one hundred active and well selected men for this purpose, at a promised compensation of one dollar per day, for each person so employed, and they immediately entered upon active service.

A considerable military force from the cities of Albany and New-York was also put in requisition by the authorities of the State, and took their station in the city of Hudson. They remained there for several weeks. Together with the guard of one hundred men, they were directed to place themselves, and actually were under the command of the sheriff of the county ; and together with that guard they performed such service (and active and efficient service it frequently was) as they were required to perform by the sheriff. The guard of one hundred men were furnished with arms from the State arsenal by direction of the Government, held themselves in readiness at all times to act in connection and co-operation with the military troops, (strictly so called,) and in fact accompanied them on several expeditions through the county. They were under the command of a military

officer, selected by the sheriff, were as far as the limited time allowed, instructed and exercised in the military drill and tactics, and in fact performed the precise service which, had they not been thus enrolled, the military force ordered out by the State authorities would have been called upon and required to perform. When the month's enlistment was about expiring, the sheriff, with some citizens of the county of Columbia, came to the city of Albany and obtained the advice of his excellency the Governor, as to the propriety of continuing their enlistment.

The Executive advised the continuance and maintenance of this force for as long a time as should be needful, as less expensive and not less effective than a military force expressly detailed for that object, and as possibly less repugnant to the feelings of those who had been concerned in these unfortunate disturbances, and expressed his opinion that the Legislature would provide for the payment of this corps out of the State treasury. With this view and under these suggestions, this force was continued and still remains in active employment. At the expiration of the month for which they were enlisted, they were paid by the sheriff with funds furnished him by the signers of the indemnity bond. The appropriate time for dispensing with their services has not yet arrived. The prisoners who were expected to be tried at the court of oyer and terminer, recently convened and still in session, under the authority of an act of this Legislature, have had the traverse of the indictments already found against them, which are several in number, postponed to the court to be held in that county in March, and having after a full hearing been refused bail, they remain yet confined in prison. The danger of a rescue, it is said, has not yet entirely subsided, but your committee are assured that at the earliest practicable period the services of this guard will be dispensed with; and if they are now withdrawn, their places would undoubtedly be supplied by a portion of the military force heretofore stationed at Hudson.

From the best consideration which your committee have been able to give to the subject, they cannot regard the position and employment of these one hundred men, as materially different from the strict and regular military force, in regard to whose expenses, a bill to provide for their payment by the State, has already received the fa-

avorable action of the Senate. They performed equally effective services—they were enlisted and continued in service at the suggestion and with the concurrence of prominent and prudent State officers—they supplied the place and performed services which unquestionably would have required an additional military force to the same extent, if this corps had not been formed; and, as a measure of economy and sound policy, your committee are of the opinion that the selection of this guard for this particular service was wise and well considered. Your committee cannot regard this corps in the light of an ordinary sheriff's posse. The latter is summoned upon a sudden emergency for a temporary purpose, and is disbanded as soon as that purpose is accomplished.

It is believed that the law does not contemplate the continuance in service for any length of time of a sheriff's posse, and that it is not competent for the sheriff to retain them under his command after the special object of their action in securing the due execution of process is accomplished. This case appears to your committee to stand on a different footing altogether, and while they recognize the established and salutary doctrine, that the ordinary expenses attending the exercise of criminal jurisdiction should be borne by the county within whose borders the offences are committed, they regard this case as coming within a just and salutary exception to that rule. And your committee must be permitted to add, that the character of the present rebellion, the extent to which it has prevailed, spreading, as it has, over a large number of counties, the length of time during which it has been permitted, without serious and decisive opposition, to grow and gather strength—the peculiar acrimony and virulence with which the insurgents have, in many instances, asserted and propagated their pernicious doctrines, and the bold and open violence with which they have assaulted public officers and private citizens, have, in the judgment of your committee, deprived this question of a local or sectional character, and made it one in which the dignity and honor of the State, the supremacy of her laws, and the permanent well being of her citizens are involved. In such a case there should be no hesitation. The canker should not be permitted to spread over the whole body politic, but it should be at once and effectually extirpated. It is by no means certain that in all the counties where this excitement exists, there is sufficient effective force among the orderly and well disposed

portion of the citizens to cope with a body of insurgents, rapid and decided in their movements, readily receiving aid and co-operation from their brothers in arms elsewhere, and inflamed by passion, and, to a great extent, imaginary grievances. However this may be in the county of Columbia, it would, in the opinion of your committee, do injustice to that part of her population who have manifested so much prompt and successful energy in repressing these outbreaks against the laws, to turn our backs upon them, and bid them to take care of themselves, when the battle they have fought is emphatically the battle of the State, and the triumph they have achieved is the triumph of law and order, over anarchy and rebellion.

The expense which that county has incurred, and with which she is unavoidably chargeable, without reimbursement from other sources, must necessarily be large and onerous, and your committee believe that it is but an act of justice, as well as of good policy, to relieve her, as in this instance and to the extent provided in this bill, and in the one which has already passed the Senate, and they therefore ask leave to submit the following resolution, together with the bill referred to them.

Resolved, That the corps of one hundred enlisted men, raised to guard the jail of the city and county of Hudson, was wisely and prudently done, with the advice and consent of the proper State officers; and that the expense thereof should, in justice, be a charge on the State treasury, and not on the county of Columbia.

CORRESPONDENCE.

LETTER

From J. P. Beekman to the Governor.

To His Excellency Gov. WRIGHT.

SIR—Will your Excellency have the goodness to state how far we were justified, by any conversations we have had with you, in assuming the principle that the State would pay the expenses incurred in paying the guard of one hundred enlisted men in the city of Hudson, for the protection of the jail. I do not say that your Excellency assumed or promised the payment in behalf of the State, but that we were led to believe, from such conversations, that your opinion was, that the State, from the peculiar adaptation of the force to the nature of the service, would assume the expenses referred to.

I remain most respectfully, yours, &c.,
J. P. BEEKMAN.

SENATE CHAMBER, }
Feb. 11, 1845. }

LETTER

From the Governor to John P. Beekman.

Albany, February 15, 1845.

MY DEAR SIR—Your note of the 11th was received on the day of its date, and a reply to it has been delayed because I could not find time, from other duties, to give it.

At a consultation, which I attended at the request of Gov. Bouck, soon after my arrival in Albany, and I think on the 27th or 28th of December last, on the subject of ordering a military force to Hudson,

[Senate, No. 42.]

in aid of the sheriff of Columbia county and his posse, I took part in the conversations to which you allude. I advised the sending of a force, in compliance with the application of the sheriff, and the corporate authorities of Hudson, but not to the extent of five hundred men, the number called for.

I then, for the first time, learned that the sheriff had provided himself with an armed posse of one hundred men, who were contracted with to serve for thirty days, if required so long, at the price of one dollar per day each. The subject of this expense was mentioned, and the inquiry was made whether it would not be better and safer for the county, and for the sheriff, that he should discharge this posse, and rely solely upon the military force to be ordered into the service of the State, by the Governor, as then the expense would be a State matter, and not rest upon the sheriff, or the corporation of the city. I advised against that course, and that the posse should be retained. I expressed doubts whether the Governor could order the military from other counties, but in aid of the sheriff's posse, and whether the dismissal of that posse might not cast a doubt upon the right to retain the foreign military force in service. I also expressed the opinion that the posse, at the rate of compensation stipulated, would be a cheaper force than the military, would be equally efficient, and was the more appropriate force for the service. I also expressed the opinion, that there was no doubt of the liability of the county to indemnify the sheriff against this, and all other proper expense of serving his criminal process, or that the Legislature, when assembled, would make prompt provision for his indemnity, either by an assessment upon the county, or by a payment from the State treasury.

The expense of subsisting the military force to be ordered into service by the Governor was also a subject of discussion, and as no means were at the disposal of the Governor for that object, I advised that his order should be made upon the condition that the sheriff and the corporate authorities of the city would provide subsistence and barracks, until the Legislature could act in the matter.

I did not, at this time, know or hear any thing of the bond of indemnity to the sheriff, against the expenses of the armed posse, voluntarily given by the citizens of Hudson.

I perceive it has been supposed that I expressed doubts as to the legal right of the sheriff to continue his posse in service, under the law as it is. I did not express such doubts, but I did say, that the law had manifestly not contemplated such cases, and that, without any provision for their payment, it would be out of the power of the sheriff to continue a posse of citizens in service as a permanent guard, because men would not stay and serve without wages and subsist themselves; that the law had been framed to meet sudden emergencies, an unanticipated and temporary resistance, and a consequently temporary service of the posse, and hence, that no provisions had been made for arms, or pay, or subsistence. My doubts, therefore, were as to the physical, not the legal, power of the sheriff to keep his posse for such a service. I did say, in speaking of the law, that its framers had in

their minds resistance to the service of process merely, and not the necessity of a permanent guard to prevent a rescue of prisoners fully arrested and committed to the jail.

I do not remember that I went further than I have related, upon this occasion, in the expression of an opinion that the Legislature would provide for the payment of this posse out of the State treasury.

Upon frequent occasions, after I entered upon the duties of the office of Governor, when the reduction of the military force at Hudson was proposed, the expense of the sheriff's armed posse was spoken of, and the proposition to dismiss it and retain the military in its stead, renewed. I always advised against the latter course, assigning my doubts as to my authority to retain the military in the service, and under the control of the sheriff, after he should decide that he could dismiss his posse, and also urging that the posse was the more economical force to be retained. Upon these occasions I may have expressed the opinion that the Legislature would assume the payment of the armed posse, if so retained, that the militia might be dismissed, as I know I entertained the opinion.

At about the time that the thirty days were to expire for which the posse had been hired, I recollect the sheriff called upon me, with several of his friends from the county, of whom I think you were one, and the subject of dismissing the posse, to release him from liability, was particularly discussed. I think it was also stated that, in case the posse should be retained, all the military might very soon be spared. I still advised retaining the posse and dismissing the whole of the military force, at the earliest day consistent with the perfect safety of the jail and the prisoners, and suggested to the sheriff that the cost of subsisting the militia, which was still resting upon him, would be nearly equal to that of paying the posse; and at that time, I well recollect, expressing the opinion that the Legislature would provide for his indemnity as readily against the one expense as the other, and I presume I indicated the belief, for I certainly entertained it, that either expense would be paid from the State treasury.

Yet I am sure I did not, as you say I did not, assume to promise for the State, or to possess any knowledge of the opinions of the members of the Legislature, in reference to the subject. The opinions expressed were merely those entertained by me personally, and I doubt not you were authorized, from my expressions, to believe they were such as I have avowed them to be. How far the firm and efficient and successful course of the sheriff of your county, and his officers, and the patriotic conduct of your citizens in sustaining him in the execution of the laws, may have influenced these opinions on my part, I will not attempt to say; but I do know that the history of these disturbances, the then condition of things in other counties, and the determination which was manifested in Columbia to sustain and enforce the law, and preserve the peace and order of society, induced me to feel that every reasonable and safe encouragement should be given to your sheriff, and your citizens acting in aid of his efforts, as a matter of public policy, and equally of public interest. It ap-

peared to me that the importance of securing a successful result to those efforts could not well be over-estimated.

With great respect,

I am yours, &c.,

SILAS WRIGHT.

Hon. JOHN P. BEEKMAN, of the Senate.

LETTER

From J. P. Beekman to the Attorney-General.

SENATE CHAMBER, }
Feb. 10th, 1845. }

TO the ATTORNEY-GENERAL :

SIR—Will you have the goodness to state how far you as Attorney-General advised the enlistment of the corps of one hundred hired men, for the protection of the jail in the county of Columbia, immediately after Boughton's arrest, and what passed between you and certain citizens of Hudson, in relation to the ultimate payment by the State, for their services as such guard.

I remain respectfully yours,
J. P. BEEKMAN.

LETTER

From the Attorney-General to J. P. Beekman.

Congress Hall, February 12th.

HON. J. P. BEEKMAN, of the Senate.

SIR—I have the honor to be in the receipt of your favor, requesting a statement from me “how far, as Attorney-General, I advised the enlistment of the one hundred men, as a guard for the protection of the jail in the county of Columbia immediately after arrest of Boughton, as well as what passed between me and certain citizens of Hudson, in relation to the *ultimate* payment by the State, for their services as such guard.”

It gives me great pleasure to comply with your request, more especially from the fact, that I discover from the debates in the Senate that I have been understood differently by different Senators ; and that I may be better understood, I would say, that when at Hud-

son, at the time referred to by you, I visited the place without the authority or direction of the Governor, upon the simple request of the district attorney, of the county of Columbia. That upon my arrival I found Boughton, and some of his associates, in custody, and strong apprehensions were then entertained upon the part of the citizens, that an attempt would be made to rescue the prisoners from the jail where they were confined, by a strong force. The suggestion was at once made to me, upon my arrival, that a requisition should be made upon the Governor for a military force. This course I discouraged, upon the ground that the sheriff of the county had full power to call out the power of the county, and arm them with the arms of the State, which I promised to see provided—that I considered this would be the most efficient, and at the same time the most economical force, that could be employed.

Upon the objection being made, by the sheriff and other citizens, that no provision was made by law, either for the support, or payment of such force, they were referred by me, to the board of supervisors of their county. My attention was then directed to the probable difficulties of obtaining payment from that source, which I at once appreciated. I then remarked to the sheriff and other citizens that the law did not seem to have anticipated a case like the present, and that I thought the Legislature would in all probability pass a general law, which would enable the sheriff to draw directly from the treasury of the State, the necessary means for the support of the guard, whenever he found it necessary to call it out; but under the present exigency, although I was then without authority, I did not hesitate to give it as my opinion, that the Legislature, as soon as it should convene, would fully indemnify and protect the sheriff, or any other citizens who should incur the expenditure of the necessary means to support such guard.

This opinion I often reiterated and enforced in the most confident language. Upon my assurances thus made, as I doubt not, a bond of indemnity for the sheriff was immediately drawn up and executed by a number of the citizens of Hudson, and the guard of one hundred men raised. This, I believe, is substantially what passed between the citizens of Hudson and myself, as to the payment of the guard raised by the sheriff. And I have no recollection that the question, whether the county of Columbia should or should not be, *ultimately* liable for the payment of such guard, was raised or discussed, either by the citizens of Hudson or myself, the sole question being one of indemnity to the sheriff and those citizens who should assume the responsibility of raising it.

I have the honor to be,

Your obedient servant,

GEO. P. BARKER.

LETTER

From C. L. Monell to the Adjutant-General.

Albany, February 12, 1845.

Hon. A. C. NIVEN, *Adjutant-General* :

DEAR SIR—At the meeting of the Commander-in-chief and several of the State officers, (at which Governor Wright, Lieut. Governor Gardiner, and Chancellor Walworth, were present) held in your office about the 23d December last, in relation to the requisition of the sheriff of Columbia county for five hundred troops, you will recollect that after it was concluded to grant the request, it was debated whether so large a force as five hundred men were necessary; (the sheriff having stated in his affidavit that upon the suggestion and advice of the attorney-general, he had already enlisted one hundred men for the space of thirty days, to aid in defence of the jail, &c.) and all the gentlemen present, concurred in the opinion that those one hundred men being already enlisted, and under arms, had better be retained by the sheriff, as being less expensive than a like number of troops sent from abroad, and hence a smaller number than five hundred would be adequate to the present necessities of the case; and Chancellor Walworth suggested that brevets might be issued to the officers, and the men regularly enrolled as a military corps. My recollection of the conversation is, that it was well understood that these one hundred men were considered as a substitute for a like number of the force required from abroad, and they were distinctly recognized as a *military* and not a *civil* posse; Governor Wright and others expressing it as their opinion, that the sheriff had no power to command the assistance of his county, for a continued service of thirty days in defence of the jail, &c., but that power extended only to assistance in the service or execution of process, &c., which, when done, the posse were discharged, and that this presented a different case from the one contemplated by the statute, to wit: aid in the service of process, &c.

It was therefore, in view of these facts and suggestions, that a less number of troops than the five hundred required were ordered to proceed to the city of Hudson.

I do not mean to be understood as implying from any part of the conversation that any *order* was directly or indirectly made by the department in relation to the one hundred men, but that they were fully recognized as a part of the military force under the command of the sheriff, and were treated as a *substitute* for a like force from another county.

Should you concur with me in your recollection of the conversation alluded to, you will oblige me by communicating the same at your earliest convenience.

I am, very respectfully,

Your obedient servant,

CLAUDIUS L. MONELL.

LETTER

From the Adjutant-General to C. L. Monell.

ADJUTANT-GENERAL'S OFFICE. }
Albany, Feb. -2, 1845. }

C. L. MONELL, Esq.

DEAR SIR—My recollection of the facts alluded to by you in the foregoing communication is substantially in accordance with your own.

The one hundred men enlisted in Hudson were considered a substitute for an equal military force, but as they were not enrolled and organized as a *corps* under the laws of the State no order could be issued by me in reference to them.

Your obedient servant,
A. C. NIVEN, *Adj. Genl.*

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